

**REMARKS**

Claims 1-10 and 25-34 are pending in this application. The Examiner withdraws claims 11-24 from consideration. By this Amendment, claims 1-2, 4-7, 9-10, 25-30, and 33-34 are amended, and claims 11-24 are cancelled without prejudice or disclaimer. No new matter is added. Support for the claims can be found throughout the specification, including the original claims, and the drawings. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

**I. ALLOWABLE SUBJECT MATTER**

The Examiner is thanked for the indication that 1-4, 6-9, 25-28 and 30-33 are allowed.

**II. RESTRICTION REQUIREMENT**

Applicants maintain their traversal of the restriction/election requirement set forth in the Patent Office communication dated. However, for the purpose of expediting prosecution of the application, applicants have cancelled non-elected claims 11-24.

**III. OBJECTION TO INFORMATION DISCLOSURE STATEMENT**

The Office Action objects to the Information Disclosure Statements filed October 26, 2001 and January 16, 2002 under 37 C.F.R. 1.98(a)(3) because they do not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 C.F.R. 1.56(c) most knowledgeable about the content, of each reference



listed. 37 C.F.R. 1.98(a)(3)(i) states that any Information Disclosure Statement filed under § 1.97 shall include:

"[A] concise explanation of the relevance, as it is presently understood by the individual designated in §1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed **that is not in the English language** (emphasis added). The concise explanation may be either separate from application's specification or incorporated therein."

All of the patents and publications cited in and provided with the submitted Information Disclosure Statements are written in the English language. Accordingly, it is respectfully submitted that the Information Disclosure Statements filed October 26, 2001 and January 16, 2002 meet the requirements of 37 C.F.R. 1.98(a)(3), and thus withdrawal of the objection is respectfully requested.

The Examiner requests a corrected form PTO-1449 be furnished for the Information Disclosure Statement filed October 26, 2001 indicating name of the publication and year of publication. The corrected form PTO-1449 filed herewith is responsive to the Examiner's request. Accordingly, it is respectfully requested that the objection be withdrawn.

**IV. REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

The Office Action rejects claims 5, 10, 29 and 34 under 35 U.S.C. §112, second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

Claim 5 recites "The method of claim 1, wherein an optical density of the cell culture is measured," and does not include the limitation "measuring only one fermentation parameter, i.e., optical density" (emphasis added) as alleged by the Patent Office. Although at least two cultivation parameters are measured, as set forth in independent claim 1, from which claim 5 depends, claim 5 merely claims the measurement of an optical density, and does not further limit the measurement of cultivation parameters to a single parameter. Accordingly, it is respectfully submitted that claim 5 meets the requirements of 35 U.S.C. §112, second paragraph, and thus withdrawal of the rejection is respectfully requested.

Similarly, claim 10 recites "wherein optical densities of the at least two cell cultures are measured," claim 29 recites "wherein an optical density of the cell culture is measured," and claim 34 recites "wherein an optical density of each of the at least two cell cultures is determined." As set forth above with respect to claim 5, claims 10, 29 and 34 do not include the limitation "measuring only one fermentation parameter, i.e., optical density" (emphasis added), as alleged by the Patent Office. Accordingly, it is respectfully submitted that claims 10, 29 and 34 also meet the requirements of 35 U.S.C. §112, second paragraph, and thus withdrawal of the rejection is respectfully requested.

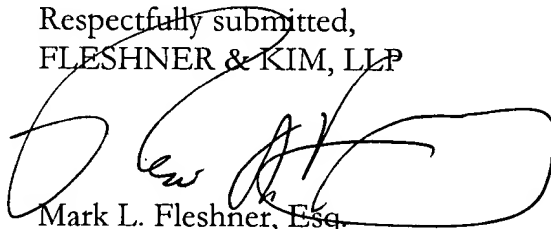


**V. CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, René A. Vazquez, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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